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Attorney for Plaintiff CHAUNTEL RAMPP

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHAUNTEL RAMPP,

Plaintiff,

vs.

OCWEN FINANCIAL
CORPORATION,
OCWEN LOAN SERVICING LLC,
NOMURA CREDIT & CAPITAL,
INC.,
EQUITY ONE, INC.,
WELLS FARGO BANK, NATIONAL
ASSOCIATION,
HSBC BANK USA, NATIONAL
ASSOCIATION,

Defendant(s).

Case Number: 11-cv3017 BTM (NLS)

**PLAINTIFF'S REPLY TO
RESPONSE TO MOTION FOR
SUMMARY JUDGMENT**

Date: 01.24.14

**Time: 11:00 a.m. (No oral argument
unless requested by his Honor)
Original Docket Entry -78-**

TRIAL DATE: Not Set

Hon. Chief Judge Barry Ted
Moskowitz

PROCEDURE:

1. Plaintiff filed Motion for Summary Judgment; the matter was continued per mutual stipulation of Counsel to allow completion of Discovery. Defense Counsel conducted Deposition of James Rampp (not a party to this action), and Plaintiff Chauntel Rampp.

- 1 2. Counsel for Plaintiff appeared with the permission of Defense Counsel,
2 at the deposition of James Rampp, however James Rampp was not
3 represented by counsel during the deposition.
- 4 3. Counsel for Plaintiff did appear with his client the Plaintiff, the
5 Deposition took approximately two days, and was continued due to
6 calendar conflicts of the parties, however the Deposition was completed.
- 7 4. As the Court will recall this is a predatory loan law suit in specific
8 performance for equity to reinstate the loan modification entered into by
9 this Plaintiff and Litton Loan Services, who assigned the loan to the
10 Defendants named.
- 11 5. This Court set an initial order approximately 16 months ago on
12 Temporary Restraining Order Request, which ratified the contract
13 between the parties, finding that the contract satisfied the Statue of
14 Frauds, and ordered that this Plaintiff deposit with the Clerk of the Court
15 the monthly payment. The Plaintiff has done that since the inception of
16 the order, and there is approximately \$43,000.00 on deposit with the
17 Clerk of the Court.
- 18 6. The Plaintiff filed for Summary Adjudication requesting that the
19 Temporary Order issued by this Court remain in full force an effect, and
20 become a permanent ruling, and that the Defendant's be ordered to
21 comply with the initial contract as written.
- 22 7. The remaining issue of legal fees as called for in the contract could be
23 adjudicated per noticed motion.
- 24 8. Plaintiffs rely on the arguments and authorities presented in their initial
25 motion and supplement this response to the arguments raised in
26 opposition.
- 27 9. Plaintiff response includes the exhibit presented and the Declaration of
28 Counsel in support.

MEMORANDUM OF POINTS AND AUTHORITIES

I. THERE WAS A VALID CONTRACT BETWEEN THE PARTIES AND THE COURT MUST RATIFY THE CONTRACT AND GRANT THE SUMMARY JUDGMENT

10. In order for the Court to grant the relief requested the Court must ratify the existence of the contract between the parties.

11. This Court has already ruled, and it is res judicata in this matter that the contract *did not* violate the Statue of Frauds when the Court issues the preliminary order posting payments to the Clerk of the Court.

12. Therefore according to the existing ruling there is a valid contract, which affords the remedy requested of Specific Performance.

II. WAS THERE FRAUD IN THE INDUCEMENT BY THE PLAINTIFF IN FORMATION OF THE CONTRACT WHICH WOULD JSUTIFY A NOVATION OF THE AGREEMENT AND RENDER IT VOID?

13. It would appear that now the Defendant attempt to argue formation Fraud which would give rise to novation of the agreement, therefore not obligating this Defendant to the contract.

According to the Arguments raised in the Reply it appears as though the Defense is stating because JAMES RAMPP the former spouse of the Plaintiff testified in Deposition that he did not intend to reside in the residence, nor did he intend to occupy it there was fraud in the inducement for the loan.

14. This argument has no merit. The predecessor in interest to these Defendants Litton Loan Servicing had not one, not two but three

1 attorneys representing their corporate interests the modification process
2 of this contract began in 2010, and was handled by three different
3 attorneys, (See Attached Exhibits, Original Loan Packet sent to Counsel
4 One, Request for Registration of the Loan Modification with Counsel
5 Two, and finally last year of communication with Counsel Number three
6 all verifying who would reside and whose income was being used for
7 qualification).

10 15. The last Attorney in San Diego Timothy Silverman brokered the final
11 agreement. Throughout the entire time and from the beginning it was
12 made clear to Litton that James Rampp would not occupy nor would he
13 reside in the house, the parties were going the completion of a divorce,
14 and indeed that is why Litton sought the income information of Russell
15 Blackwood, [deceased 01.2013], to qualify the Plaintiff on this contract.

18 16. There was NO Fraud in the Inducement, at any time to LITTON, the
19 lender qualified this plaintiff on the information it requested again
20 knowing that her previous spouse would not maintain possession of the
21 house.

23 17. A simple review of the Bankruptcy Docket does verify this argument,
24 including but not limited to the various law in motion matters brought
25 before the Bankruptcy Court, the Motion for Relief from Stay brought by
26

1 Litton's Counsel, and their Response to the Adversarial Complaint filed
2 by this Plaintiff in that venue to protect her property.

3 18. Again bear in mind that the Trustee paid Litton \$14,330.00 collected
4 form the Plaintiff and applied to the mortgage before the loan contract was
5 executed in 2011.

6
7 19. The last Attorney representing Litton Timothy Silverman brokered the
8 final agreement in San Diego. Throughout the entire time, and from the
9 beginning of this Plaintiffs work with his firm and the information
10 supplied by this Plaintiff, Counsel for Litton Mr. Silverman's Office was
11 aware of the occupancy and qualification status of the parties.
12

13 Furthermore Mr. Silverman had received all this information from
14 Litton's previous counsel, it was clear to Litton that James Rampp would
15 not occupy nor would he reside in the house, nor was his financial data to
16 be considered in the process of issuing the contract.
17

18 Counsel for Litton knew the parties had completed a divorce and the
19 house would not belong to him.
20

21 This is why Litton sought the income information of Russell Blackwood,
22 [deceased 01.2013], to qualify the Plaintiff on this contract.
23

24 20. There was NO Fraud in the Inducement, at any time to LITTON, the
25 lender qualified this plaintiff on the information it requested again
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1 knowing that her previous spouse would not maintain possession of the
2 house.

3 **III. ASSUMING THAT THERE WAS A VALID CONTRACT WITH NO**
4 **FORMATION ISSUES THE SECOND QUESTION WHICH MUST BE**
5 **ADDRESSED IS [WERE THERE ANY CONDITIONS PRECEDENT,**
6 **SUBSEQUENT, OR CONCURRENT, AFTER FORMATION BREACHED**
7 **BY THIS PLAINTIFF WHICH COULD BE CONSTRUED AS A**
8 **MATERIAL BREACH OF CONTRACT]?**

9 21. Assuming a valid contract from the inception, it then appears that
10 Defense argues that Plaintiff beached by not making the payments on
11 time. This is not correct. Plaintiff made all of the payments on time, there
12 was initial confusion as to where to send the money and to whom. This
13 confusion was dealt with by the Office of Mr. Silverman, and it was his
14 responsibility to make sure that the money was sent to his client on time.
15 Both the plaintiff and her counsel made repeated requests to his office
16 where to send the money so that it would be received timely.

17 22. However assuming for the sake of argument that a payment was late this
18 purported breach would only give rise to damages for the Defense, not
19 the remedy of vitiating the contract.

20 23. Where parties acquiesce by conduct to a minor breach and continue to
21 accept performance the remedy is one of damages. Nowhere in the
22 history of this contract prior to assignment to Ocwen did Litton claim any
23 type of breach because of a later payment.

24 **IV. LASTLY SHOULD THESE DEFENDANTS BE ENTITLED TO ANY**
25 **RESTITUTION OF THE BACK PAYMENTS ON THIS CONTRACT?**

26 24. Counsel for Plaintiff thinks it is worth comment to address another
27 concern, which is assuming our request is granted should these
28 Defendants be entitled to any back payments on the loan. It does appear

1 that when one party acts in such bad faith in the assumption of a contract,
2 and effectively stops accepting the payments, and placing the real estate
3 in Default for no apparent reason, that really they should be estopped
4 from recovering any back payments on the loan.

5 25.It would appear that this is actually unjust enrichment to these
6 Defendants. Had the agreement simply been honored pursuant to our
7 informal request none of this litigation would have been necessary. Has
8 Ocwen and its successors simply done their due diligence on the loan
9 history all if this could have been circumvented.

10 **IV. CONCLUSION**

11 26.Movants respectfully request the relief sought in their motion, set to be
12 heard 01.24.2014, and for such other relief as this Court may deem
13 appropriate. Accordingly, summary judgment should be granted against
14 Defendants and specific performance granted in favor of Plaintiff,
15 allowing her to do what she has tried to do from the beginning, perform
16 under the terms of the contract.

17 Respectfully submitted this 18th day of December, 2013.

18 /s/ Joseph Rego

19 Joseph Rego
20 Attorney for Plaintiff
21 Chauntel Rampp
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